

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-25 IO-14 ISO-00 CIAE-00 DODE-00 PM-07 H-03

INR-10 NSAE-00 NSC-10 PA-04 RSC-01 PRS-01 SPC-03

SS-20 USIA-15 ACDA-19 AF-10 ARA-16 EA-11 NEA-10 /183 R

DRAFTED BY L/UNA:SCNELSON:CDJ

APPROVED BY L:GHALDRICH

IO/UNP - MR. HEWITT (SUBS)

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P R 081823Z DEC 73

FM SECSTATE WASHDC

TO AMEMBASSY VIENNA PRIORITY

AMEMBASSY BRUSSELS PRIORITY

AMEMBASSY THE HAGUE PRIORITY

AMEMBASSY PARIS PRIORITY

AMEMBASSY BONN PRIORITY

AMEMBASSY ROME PRIORITY

AMEMBASSY LUXEMBOURG PRIORITY

AMEMBASSY LONDON PRIORITY

INFO USMISSION USUN NEW YORK

C O N F I D E N T I A L STATE 240859

E.O. 11652: GDS

TAGS: UNGA, ICRC, PARM

SUBJ: UNGA - LEGAL COMMITTEE - HUMAN RIGHTS IN ARMED
CONFLICTS

REF: USUN 5307 (BEING REPEATED ALL ADDRESSESS)

1. GOVERNMENTS TO WHICH ADDRESSEE POSTS ACCREDITED JOINED
U.S., U.K., ISRAEL, PORTUGAL AND SOUTH AFRICA IN VOTING
AGAINST RESOLUTION REPORTED REFTEL IN UNGA SIXTH (LEGAL)
COMMITTEE. RESOLUTION IS ENTITLED "BASIC PRINCIPLES OF
THE LEGAL STATUS OF THE COMBATANTS STRUGGLING AGAINST
COLONIAL AND ALIEN DOMINATION AND RACIST REGIMES". USUN
REPORTS THAT SOME, PARTICULARLY BELGIUM AND POSSIBLY
ITALY AND FRG, CONSIDERING SWITCHING FROM NEGATIVE VOTE TO
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ABSTENTION WHEN RESOLUTION CONSIDERED IN PLENARY. IF THIS

HAPPENED, WE WOULD EXPECT OTHERS TO DO LIKEWISE, LEAVING ONLY ISRAEL, PORTUGAL, SOUTH AFRICA, U.K. AND U.S. VOTING AGAINST. WE ARE ACCORDINGLY REQUESTING ADDRESSEES TO MAKE APPROACH TO HOST GOVERNMENTS ON DECEMBER 10, IF POSSIBLE, TO URGE THAT THEY STICK TO THEIR NEGATIVE VOTE ON THIS ITEM IN PLENARY.

2. REASON FOR USG CONCERN IS THAT WE BELIEVE IT CRITICAL TO SUCCESS OF FORTHCOMING DIPLOMATIC CONFERENCE ON THE

LAWS OF WAR TO PREVENT INTRODUCTION INTO ANY AGREEMENTS THAT CONFERENCE MAY PRODUCE OF THE IDEA THAT THE PROTECTIONS OF THE LAW ARE AVAILABLE ONLY OR PREFERENTIALLY TO ONE WHOSE CAUSE IS APPROVED. THIS CONCEPT IS POLITICALLY UNACCEPTABLE, AND SINCE A BELLIGERENT IS MOST UNLIKELY TO CONSIDER HIS ENEMY'S CAUSE JUST, IT IS A SURE RECIPE FOR DISREGARD OF THE LAW IN PRACTICE. IN SUM, IT IS DESTRUCTIVE OF HUMANITARIAN PROTECTIONS AND IS CYNICALLY ADVANCED TO PROMOTE SHORT-TERM POLITICAL GOALS AT THE EXPENSE OF ALL THE DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW THE GENEVA CONVENTIONS REPRESENT. DEFECTIONS FROM FIRM OPPOSITION TO THIS TYPE OF PROPOSAL BY THE ADDRESSEE COUNTRIES WOULD DOUBTLESS INDICATE TO AFRICANS AND ARABS THAT IT MIGHT BE POSSIBLE AT GENEVA TO OBTAIN BROAD AGREEMENT TO PROVISIONS OF TYPE THEY DESIRE. THIS WE MUST AVOID.

3. RESOLUTION IN QUESTION DEALS WITH APPLICATION TO SO-CALLED "NATIONAL LIBERATION" MOVEMENTS OF PROVISIONS OF 1949 GENEVA CONVENTIONS, IN PARTICULAR THOSE RELATIVE TO THE TREATMENT OF PRISONERS OF WAR AND TO THE PROTECTION TO CIVILIANS IN TIME OF WAR. RESOLUTION IS AN ATTEMPT TO ESTABLISH THAT ALL PERSONS "ENGAGED IN ARMED STRUGGLE AGAINST COLONIAL AND ALIEN DOMINATION AND RACIST REGIMES" ARE ENTITLED TO THE PROTECTIONS ACCORDED BY THE 1949 GENEVA CONVENTIONS TO PRISONERS OF WAR. AT THE SAME TIME, RESOLUTION WOULD TREAT "MERCENARIES" FIGHTING AGAINST "COLONIAL AND RACIST REGIMES AGAINST NATIONAL LIBERATION MOVEMENTS" AS "CRIMINALS", THUS, BY IMPLICATION, CONFIDENTIAL

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DEPRIVING THEM OF THE PROTECTIONS ACCORDED PRISONERS OF WAR UNDER THE CONVENTIONS.

4. RESOLUTION PASSED BY THE SIXTH COMMITTEE RUNS DIRECTLY CONTRARY TO THE PRINCIPLE WHICH WE HAVE ALL STRICTLY MAINTAINED THROUGHOUT THE COURSE OF THESE DISCUSSIONS. IT DOES SO IN THREE WAYS: (A) OPERATIVE PARAGRAPH 3 DEFINES "WARS OF NATIONAL LIBERATION" AS

"INTERNATIONAL ARMED CONFLICTS", THUS BRINGING THEM UNDER THE 1949 GENEVA CONVENTIONS, REGARDLESS OF WHETHER THEY IN FACT INVOLVE FORCES OF MORE THAN ONE STATE. (B) OPERATIVE PARAGRAPH 4 STATES THAT SO-CALLED "FREEDOM FIGHTERS" ARE ENTITLED TO THE PROTECTIONS ACCORDED PRISONERS OF WAR UNDER THE THIRD CONVENTION, REGARDLESS OF WHETHER THEY MEET THE OBJECTIVE CRITERIA FOR SUCH STATUS.

(C) OPERATIVE PARAGRAPH 5 SEEKS TO DEFINE "MERCENARIES" AS "CRIMINALS" WHICH WOULD IMPLY THAT THEY WOULD NOT BE ENTITLED TO THE PROTECTIONS ACCORDED POWS UNDER THE THIRD CONVENTION EVEN IF THEY DID MEET CRITERIA SET FORTH IN PARAGRAPH 3 ABOVE AND EVEN IF THEY WERE UNIFORMED MEMBERS OF THE ARMED FORCES OF A STATE.

5. PARTICULARLY IN LIGHT OF SERIOUS POSSIBILITY THAT OBJECTIVES OF FEBRUARY CONFERENCE WOULD BE DEFEATED IF AFRICANS AND OTHERS CONTINUE TO PRESS FOR SPECIAL TREATMENT FOR "NATIONAL LIBERATION MOVEMENTS", WE BELIEVE IT IS OF CRITICAL IMPORTANCE THAT WE MAKE CLEAR AT THIS TIME OUR COMMITMENT TO THE PRINCIPLE THAT THE HUMANITARIAN PROTECTIONS ACCORDED UNDER THE GENEVA CONVENTIONS MUST APPLY WITHOUT REGARD TO THE SPECIFIC MOTIVES OR "CAUSE" INVOLVED IN THE CONFLICT. WE THEREFORE STRONGLY URGE THAT ADDRESSEE HOST GOVERNMENTS MAINTAIN THEIR NEGATIVE VOTE ON THIS RESOLUTION.

6. PLENARY CONSIDERATION OF THIS ISSUE TENTATIVELY SCHEDULED FOR WEDNESDAY MORNING, DECEMBER 12.

7. BRITISH MAY BE MAKING PARALLEL DEMARCHE. RUSH

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